

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 290 of 1985

Hon'ble MR.JUSTICE S.D.DAVE

and

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

KOHYA KANA NAYAK

Appearance:

MR K.C. SHAH PUBLIC PROSECUTOR for Petitioner

MR AB MUNSHI FOR MR AJ PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

Date of decision: 04/09/97

ORAL JUDGEMENT (Per S.D. Dave J.)

1. The respondents-accused came to be acquitted of the offences punishable under section 147 and 302 read

with section 149 and under section 325 read with section 149 IPC by the learned Additional Sessions Judge, Panchmahals at Godhra in Sessions Case No.111/84 under the orders dated December 31, 1984. The said orders of acquittal are in challenge in the present appeal by the State.

2. In all 9 accused persons were put on trial for the alleged commission of the abovesaid offences on the accusation that they had formed themselves into an unlawful assembly on June 21, 1984 at about 6 p.m. at village Navakuva under the Halol Taluka of Panchmahals District, and having armed with deadly weapons, had committed rioting and had killed one Jesing Vira and had injured the prosecution witnesses. The charge which came to be framed at Exh.3 against the accused persons came to be denied by them. On the appreciation of the prosecution evidence the court below has taken the view that the charges against the accused persons were not established. All the accused persons, therefore, came to be acquitted under the abovesaid orders of acquittal. The appeal came to be admitted against the present respondents who are the original accused nos.1, 2 and 3 in the Sessions Case before the court below.

3. Learned counsel Mr. K.C. Shah wanted to urge that the court below was at an error in recording the judgement of acquittal because a number of witnesses had supported the case of the prosecution and that there was absolutely no reason for the court below to throw the evidence of such witnesses overboard. With a view to appreciate this contention coming from the learned counsel Mr. Shah we have read the evidence of the prosecution witnesses who have supported the case of the prosecution. Despite this, in our opinion, the court below appears to be justified in coming to the conclusion that there were serious infirmities in the case of the prosecution and that therefore the said case of the prosecution was not worthy of acceptance.

4. The court below has noticed with pertinence that the incident in question had taken place at about 6 p.m. and later on the complainant and all the prosecution witnesses had reached village Varasada and though the dead body of the deceased also came to be transported to the said village, and though the village had the Sarpanch and the Police Patel, the FIR came to be lodged on the next day at about 12.30 afternoon. It is also the finding recorded by the court below that admittedly some report was prepared by the village Police Patel upon the request of the complainant and village Sarpanch with a

view to forward the same to the concerned police station, but the abovesaid report was not forthcoming and queer enough the village Police Patel could not be examined by the prosecution. The court below has also noticed that though the incident is alleged to have taken place at about 6 p.m. near the bus stand at village Navakuva, there was absolutely no evidence from the villagers of the abovesaid village. The court has noticed that in any case at 6 p.m. near the bus-stand of the village so many independent eye witnesses would be available.

5. Upon the reading of the evidence as a whole we are satisfied that the court below was perfectly justified in coming to the abovesaid conclusion. It could not be disputed that village Varasada had the Sarpanch and the Police Patel, but the FIR could be registered only on the next day in the afternoon. It is a fact that according to the say of the prosecution witnesses the Police Patel had prepared a report with a view to furnish it to the concerned police, but that report is found to be missing. Even the Police Patel could not be examined. No independent witness came to be examined by the prosecution. The witnesses admit that though the Sarpanch was informed regarding the incident, no names of the accused were furnished to him. All these prominent features being revealed by the evidence of the prosecution would go to show that the case presented by the prosecution was not worthy of acceptance and that the court below appears to be justified in not accepting the case of the prosecution because of the abovesaid infirmities.

6. In our opinion, the abovesaid infirmities being pointed out by the court below are so prominent in nature that we are not in a position to take a different view than what has been taken by the court below. In our opinion, therefore, the present appeal fails and the same requires to be dismissed. We order accordingly. In the result the orders of acquittal pronounced by the court below requires to be upheld and confirmed. We do so. The bail bonds taken in pursuance of theailable warrants issued by this court, shall stand cancelled.
